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**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN  
APPELLATE DIVISION**

**MICHELLE VAN GORES,**

Defendant/Appellant,

v.

**GOVERNMENT OF THE VIRGIN ISLANDS,**

Plaintiff/Appellee.

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) **Crim. App. No. 1999-255**

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) Re: Terr. Ct. Crim. No. 5672/99

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**On Appeal from the Territorial Court of the Virgin Islands**

**Considered: November 3, 2000.**

**Filed: October 1, 2001.**

**BEFORE:**     **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands **THOMAS K. MOORE**, District Court of the Virgin Islands; and **MARIA M. CABRET**, Presiding Judge, Territorial Court of the Virgin Islands, Division of St. Croix, Sitting by Designation.

**ATTORNEYS:**

**James M. Derr, Esq.**

St. Thomas, U.S.V.I.

*Attorney for Appellant,*

**Joel H. Feld, Esq.**

Department of Justice, St. Thomas, U.S.V.I.

*Attorney for Appellee.*

<b>OPINION OF THE COURT</b>
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PER CURIAM.

On August 4, 1999, following a bench trial, the Territorial Court found Michelle Van Gores ["Van Gores" or "appellant"] guilty of negligent driving in violation of 20 V.I.C. § 503. The court imposed a \$50.00 fine against her and ordered her to pay \$25.00 in court costs. For the reasons set forth below, we will vacate the appellant's conviction.

**I. FACTS AND PROCEDURAL HISTORY**

On April 12, 1999, Van Gores was driving south on Crown Bay Road on St. Thomas, Virgin Islands. Donald Helms was driving west in front of Frank's Bakery on the Subbase Road and stopped at the intersection of Subbase Road and Crown Bay Road to travel north on Crown Bay Road in the direction of Nisky Center. Because the traffic in front of Van Gores had come to a halt, she stopped her car just before the intersection. This left Helms ample room to turn right, which required him to cross in front of her since we drive on the left side of the road in the Virgin Islands. Van Gores either waved Helms through or in some other fashion manifested her intent to let Helms pull out from the intersection in front of her in order to turn right.

At this point, Helms looked to his left to see if any cars were coming from that direction, saw that there were none, hesitated for at least "a few seconds," and without looking again to his right (*i.e.*, in the direction of Van Gores), pulled out quickly. By that time, however, traffic in front of Van Gores had begun to move, and another vehicle was approaching her in the opposite lane. Since it appeared that Helms was not going to take her offer to let him cross in front of her, Van Gores had taken her foot off the brake and had begun to move forward. After moving a few feet, Van Gores realized Helms was going to pull out after all, so she immediately stopped. Due to Helms' inattention to vehicles and the roadway to the right and in front of him, he failed to notice that Van Gores had moved forward. The end result was that when Helms pulled out from the intersection, he ran his vehicle into Van Gores' vehicle. The police officers at the scene nevertheless cited Van Gores for negligence "by failing to operate [her vehicle] upon a public road in a safe [and] prudent manner." (See J.A. at 7.)

After a bench trial, the Territorial Court convicted Van Gores of negligent operation of a motor vehicle in violation of 20 V.I.C. § 503. The trial judge found that Van Gores yielded her statutory right of way to Helms by indicating to Helms he could turn in front of her, and, as a result, Helms had a "right

to rely on the action." (J.A. at 79.) The judge further concluded that, while Helms was certainly required to look to his left to check for traffic coming from that direction, he had no duty to look straight ahead or to his right to see if Van Gores' car was still in the same place, and that requiring him to do so would have been "inconsistent with her yielding the right-of-way." (*Id.*) According to the trial judge, if a driver who has yielded the right of way wants to "recapture it or . . . nullify it . . . [she] has to give [the other driver] some indication, some notice, some action" indicating that she intends to retake the right of way.

[U]nless [Van Gores] gave him some other signal subsequent to that yielding to put [Helms] on notice that he no longer has the right-of-way, then [Helms] was right in coming out when the accident occurred. And this thing about looking, *he wouldn't have to look again*. He wouldn't have to look again unless she signals him that she is taking the right-of-way back.

(*Id.* at 80-81 (emphasis added).) Conscious that he was navigating in uncharted waters with respect to the issue of "yielding the right of way and trying to take it back," the judge allowed the parties to brief the issue before he sentenced Van Gores. (*Id.* at 81). Ultimately concluding that he had applied the correct legal standard, the judge found that the factual scenarios in the civil cases relied upon by Van Gores in her

brief rendered those cases and their legal principles inapplicable to the facts of this case.

## **II. DISCUSSION**

This Court has appellate jurisdiction to review judgments and orders of the Territorial Court "in all criminal cases in which the defendant has been convicted, other than on a plea of guilty." 4 V.I.C. § 33; Revised Organic Act of 1954 § 23A.<sup>1</sup> Findings of fact are subject to a clearly erroneous standard of review, and we exercise plenary review over questions of law. See 4 V.I.C. § 33; *Rivera v. Government of the Virgin Islands*, 37 V.I. 68, 73 (D.V.I. App. Div. 1997). In reviewing the sufficiency of the evidence to support a conviction, a trial court's judgment will be sustained if, viewing the evidence in the light most favorable to the government, a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt of every element of the offense. See *Georges v. Government of the Virgin Islands*, 119 F. Supp. 2d 514, 523 (D.V.I. App. Div. 2000).

The first question is whether the trial judge applied the proper legal standard to find Van Gores guilty of negligent

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<sup>1</sup> 48 U.S.C. § 1613a. The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2000), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp. 2001) (preceding V.I. CODE ANN. tit. 1).

operation of a vehicle. Section 503 provides that "[i]t shall be unlawful for any person to operate a motor vehicle in a negligent manner over and along the public highways of this Territory." 20 V.I.C. § 503. That section further provides:

[T]o "operate in a negligent manner" means the operation of a vehicle upon the public highways of this Territory in such a manner as to endanger or be likely to endanger any person or property.

*Id.* The trial judge correctly noted that there is no statute specifically addressing the situation in which a motorist "relinquishes" her right of way. (See J.A. at 63-64.)

Nevertheless, the court ruled that, when a driver has yielded her right of way to an otherwise unprivileged driver, she is required to manifest her intention to "retake" or "reclaim" her right of way if she later determines that her offer of yield has not been accepted by the other driver, on pain of criminal liability for any ensuing accident. Stated another way, the trial court held that the driver to whom the right of way has been yielded (in this case, Helms) has a right to rely on the yield and is thus completely relieved of any duty to proceed with caution with respect to the driver who "relinquished" her right of way.

The trial court's legal conclusion is untenable because it is premised upon an incorrect statement of the law with respect to Helms and upon a nonexistent legal standard with respect to Van Gores. The unwavering rule is that every driver has a

positive duty of care at all times, regardless of whether he has the right of way, how he acquired the right of way, or from whom he acquired the right of way. See *Government v. Ruiz*, 20 V.I. 439, 442-43 (Terr. Ct. 1984) (citing *MacGibbon v. Smalls*, 443 F.2d 522 (3d Cir. 1971) ("The law exacts of [a driver] constant care and attention and imposes upon him certain positive duties."); see also *Maduro v. Donovan*, 29 V.I. 118, 121 (D.V.I. App. Div. 1993) (holding that a privileged driver who proceeds without exercise of reasonable care for the safety of others may be liable notwithstanding his having the right of way).<sup>2</sup> Thus, contrary to the trial court's conclusion, Helms was never for an instant relieved of his positive duty to proceed with caution with respect to Van Gores and anyone else, and had no right to rely on her acts as somehow replacing his own duty to exercise caution. Furthermore, we find no authority for the proposition that a driver who has yielded her right of way is required, as a matter of law, to manifest her intent to "recapture" the right of way. There is simply no such requirement either express or

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<sup>2</sup> Although not directly applicable to this case, section 495a of title 20, titled "Emergency vehicles; right-of-way; reasonable care," lends further support to our analysis in this case. Section 495a(a), which requires drivers on public streets and highways to relinquish their right of way to emergency vehicles, expressly provides that "[t]his provision shall not operate to relieve the driver of an emergency vehicle from the duty to drive with reasonable care for the safety of all persons." 20 V.I.C. § 495a(a). Thus, even a driver to whom the right of way is yielded by statute is not relieved of a positive duty of care.

implied in section 503. Like Helms, Van Gores was under a positive duty at all times to proceed with caution, with or without the right of way, and it is this basic legal proposition that controls here.

To convict Van Gores under section 503, the judge had to find beyond a reasonable doubt that she operated her vehicle "in such a manner as to endanger or be likely to endanger any person or property." 20 V.I.C. § 503. Viewing the evidence in the light most favorable to the government, we cannot conclude that a reasonable trier of fact could have found the appellant guilty beyond a reasonable doubt of the elements of this offense.

The uncontradicted testimony at trial established that Van Gores stopped in a line of backed-up traffic to let Helms cross in front of her. Helms did not pull out immediately because he was looking to his left to check for traffic coming from that direction. Van Gores did not take her foot off the brake and begin to move forward until after traffic started moving again and after Helms had not taken advantage of the opening. Helms never looked again in Van Gores' direction, apparently assuming that the traffic in front of him had remained stationary. Van Gores continued to exercise due care by proceeding cautiously and immediately stopping when she realized Helms was not paying attention.



As stated above, Helms and Van Gores operated their vehicles under an equivalent duty of care, regardless of who possessed the right of way. Further, Van Gores was not required to sound her horn or otherwise signal to Helms that she intended to "nullify" her previous yield or recapture her right of way in order to fulfill her positive duty. The appellant at all times conducted herself in a reasonably prudent manner under the circumstances - in deciding that Helms would not take her offer of yield, in taking her foot off the brake to move forward slowly, and in bringing her car to a complete stop on realizing that Helms was pulling out after all. Manifestly, it was Helms' inattention that resulted in the collision of the vehicles, not Van Gores' decision to move forward. No rational trier of fact could find beyond a reasonable doubt that the appellant operated her vehicle in a manner that was likely to endanger persons or property or that she conducted herself in anything other than a reasonably prudent manner under the circumstances.

### **III. CONCLUSION**

For the reasons stated, we will vacate Van Gores' conviction. An appropriate order follows.

**DATED** this 1st day of October, 2001.

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St. Thomas, U.S.V.I.

*Attorney for Appellant,*

**Joel H. Feld, Esq.**

Department of Justice, St. Thomas, U.S.V.I.

*Attorney for Appellee.*

**ORDER**

PER CURIAM.

**AND NOW** this 1st day of October, 2001, for the reasons set forth in the accompanying Opinion of even date, it is hereby

**ORDERED** that the appellant's conviction for negligent operation of a motor vehicle in violation of 20 V.I.C. § 503 is **VACATED.**

**ATTEST:**  
**WILFREDO F. MORALES**  
Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

**Copies to:**  
Judges of the Appellate Panel  
Honorable Geoffrey W. Barnard  
Honorable Jeffrey L. Resnick  
Judges of the Territorial Court  
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